

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 7260 OF 2018

ORDER :

Order dated 17.02.2018 passed by the 2nd respondent – District Collector (Panchayat Wing), Warangal Rural suspending the petitioner from the post of Sarpanch of the 4th respondent Gram Panchayat, is challenged in this Writ Petition.

The petitioner, who claimed to be a candidate belonging to Scheduled Castes category, asserts that he was elected as the Sarpanch of Alankanipet Gram Panchayat during general elections held in July 2013. He further asserts that he belongs to Telugu Desam Party. While so, after formation of Government by TRS party, on the ground that he is not acting in tune with the ruling party, to create some troubles, various steps were taken at the instance of the rival members and in that process, on an earlier occasion, F.I.R. No. 85 of 2017 was lodged against the petitioner for the offences punishable under Sections 353, 390, 323 and 506 read with Section 34 of the Indian Penal Code and he was arrested and remanded to judicial custody in connection therewith. The petitioner was therefore, issued the show cause notice dated 15.07.2017, to which he submitted a detailed explanation on 25.07.2017, enumerating various works, which he had undertaken. Without considering the said explanation, when orders were made in August 2017, suspending the petitioner as Sarpanch, for three months, he filed Writ Petition No. 26646 of 2017, wherein this Court, *vide* order dated 11.08.2017, suspended the impugned order, but however, directed that the enquiry initiated against him should go on. By virtue of the said order dated 11.08.2017, he was continuing as Sarpanch, claims the

petitioner. However, again, he received a show cause notice on 12.12.2017 under Section 249(1) of the Telangana Panchayat Raj Act, 1994 (for short, 'the Act'), for which he submitted a detailed explanation on 20.12.2017. While that be so, the petitioner received another show cause notice dated 30.01.2018 under Section 249(1) or (6) of the Act as to why action should not be initiated for suspending him, as he was arrested on the allegations of obstructing the EO (PR & RD), Nekkonda from discharging his official duties. He submitted the explanation on 06.02.2018 denying the allegations, but however, without considering the said explanation, referring the same allegations, the impugned order was passed on 17.02.2018, invoking the power under Sections 249(6) and 258 of the Act. The Writ Petition is filed questioning the said order dated 17.02.2018 on the ground that the alleged involvement of the petitioner in a criminal case and his arrest in connection therewith is unsustainable and that the service rules relating to public servants / government servants are not applicable to the elected posts like Sarpanch and that there is no provision under the 1994 Act extending the service rules / regulations to the said posts. It is further urged that the reference made to Section 258 of the Act is misconceived and the same has no application.

Heard learned counsel for the petitioner, learned Government Pleader for Panchayat Raj for Respondents 1 to 3, learned Standing Counsel for the 4th respondent and learned counsel for the 5th respondent caveator.

The question involved being purely a question of law, with the consent of the learned counsel appearing for the respective

parties, the Writ Petition itself is disposed of at the admission stage.

At the outset, it may be noted that certain financial irregularities were attributed to the petitioner. Admittedly, the impugned order discloses that the petitioner was suspended by invoking the powers available under Sections 249(6) and 258 of the 1994 Act, for, the petitioner failed to perform his duties and responsibilities and that he was in judicial custody for a period more than 14 days, in connection with a crime.

For better appreciation of the case, it is necessary to have a look at the provisions under Sections 249(6) and 258 of the Act.

“ 249. Powers of Government to remove Sarpanch, President or Chairman etc.: -

(6) If the District Collector is of the opinion that a Sarpanch or a Upa-Sarpanch or any member of a Gram Panchayat or the Government are of the opinion that any President or Vice-President or the Chairman or Vice-Chairman or any member of a Mandal Parishad or Zilla Parishad wilfully omitted or refused to carry out the orders of Government for the proper working of the concerned local body or abused his position or the powers vested in him, and that the further continuance of such person in office would be detrimental to the interests of the concerned local body or the inhabitants of the village, Mandal or District, the District Collector or as the case may be, Government may, by order, suspend such Sarpanch or Upa-Sarpanch or President or Vice-President or as the case may be, the Chairman or Vice-Chairman or member from office for a period not exceeding three months, pending investigation into the said charges and action thereon under the foregoing provisions of this section:

Provided that no order under this sub-section shall be passed unless the person concerned has had an opportunity of making a representation against the action proposed:

Provided further that it shall be competent for the Government to extent, from time to time, the period of suspension for such further period not exceeding three months, so however that the total period of suspension shall not exceed six months:

Provided also that a person suspended under this sub-section shall not be entitled to exercise the powers and perform the functions attached to his office and shall not be entitled to attend

the meetings of the concerned local body except a meeting held for the consideration of a no-confidence motion.”

“ 258. Chairman, President, Sarpanch etc., to be public servants: - The Chairperson, the Vice-Chairperson or a member of a Zilla Parishad, the President, the Vice-President or a member of a Mandal Parishad, the Sarpanch, Upa-Sarpanch or member of a Gram Panchayat, the Chief Executive Officer, the Mandal Parishad Development Officer, the Executive Officer, or any officer or servant of a Zilla Parishad or a Mandal Parishad or the gram panchayat shall be deemed to be a public servant, within the meaning of Section 21 of Indian Penal Code.”

Making a reference to Section 258, the learned Government Pleader contends that the Sarpanch and the Upa-Sarpanch and other elected members referred to therein are public servants and it is well-settled that when a public servant is arrested and remained in judicial custody beyond 24 hours, he / she is liable to be suspended from service. He further submits that in the case on hand, on account of the fact that the petitioner, who is a public servant, admittedly, is in judicial custody for more than 14 days, he came to be suspended.

From a careful reading of the above provisions, it is clear that the purpose and purport of Section 258 is narrow and limited. The said provision is to be extended to the extent of giving a protection, as is available to a public servant in discharge of his functions. The language employed therein is *‘deemed to be a public servant’*. It is well-settled that the scope of a deeming provision cannot be expanded beyond what is intended to in that provision. Merely because under Section 258, the protection available to a public servant is extended to an elected member of the gram panchayat, the same automatically does not bring in either other service benefits or the liabilities attached to the service of a public servant. In those circumstances, it can safely be said that the 2nd respondent District Collector is not vested with the

power to suspend the petitioner on the ground that he is in judicial custody. In the absence of the power, the action taken by the 2nd respondent Collector *ultra vires* the provisions of the Act. It may also be pointed out that there is no other provision that is brought to the notice of this Court which will authorise / empower the 2nd respondent Collector to take any action with respect to an elected member on the ground of the said individual having been involved in a crime / arrested.

Though a reference is made to the judgment of this Court in ***Janagama Shankaraiah v. Government of Andhra Pradesh*¹**, a close scrutiny of the same discloses that the facts of the said case are not similar to the one pleaded in the present Writ Petition. Hence, it is not necessary for this Court to deal with the same.

In view of the above, the action of the 2nd respondent being *ultra vires*, the impugned order is liable to be set aside. Therefore, the question of availing alternative remedy of appeal by the petitioner in terms of Section 249(7) of the Act, does not arise.

The Writ Petition is accordingly, allowed and the order dated 17.02.2018 is set aside. No costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

12th March 2018

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¹ 2011(1) ALD 251